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C O N F I D E N T I A L SECTION 01 OF 03 KYIV 000790

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E.O. 12958: DECL: 12/15/2014
TAGS: [PGOV](#) [PREL](#) [UP](#)
SUBJECT: UKRAINE: YUSHCHENKO'S CALL FOR MAY 27 PRE-TERM
ELECTIONS SETS OFF BUREAUCRATIC JOSTLING

REF: KYIV 784

Classified By: Ambassador for reasons 1.4(b,d).

1. (SBU) Summary: On April 2, after several days of tense negotiations and peaceful street demonstrations, President Yushchenko announced his intention to dissolve the Parliament (Verkhovna Rada) and set May 27 as the date for new elections; his decree was officially promulgated April 3. On April 3, Yushchenko met with the Central Election Commission (CEC) Chair Davydovych to outline the process for the pre-term elections, which the commission head promised could be accomplished in the time frame set by the president at the cost of 340 million hryvnia (\$68 million). The majority coalition has resisted Yushchenko's efforts, passing resolutions late April 2 after Yushchenko's speech that there was no legal basis for the president's decision and banning the government or national bank from financing elections; the Cabinet confirmed the Rada ban on financing with its own resolution April 3. A group of MPs subsequently submitted a petition to the Constitutional Court to determine the Presidential decree's constitutionality; the President also appealed the Cabinet's resolution to the Constitutional Court. The Rada majority also attempted late April 2 to dismiss the current CEC and restore the previous election committee headed by Regions MP Serhiy Kivalov, who had been dismissed December 8, 2004 for his role in attempting to falsify the 2004 Presidential elections and declare Yanukovych rather than Yushchenko President. The Pechersk district court threw out the Rada's April 2 CEC-related resolutions late April 3, leading Kivalov to vow action to unseat the judges. Mid-day April 4, 20 coalition MPs arrived at the CEC Chair's office, amidst conflicting reports regarding their purpose; one MP told reporters that they planned to remain until May 27 to prevent the CEC from implementing the decree's call for new elections.

2. (C) Comment: Yushchenko's decision to issue a decree

dismissing the Rada and calling new elections for May 27 is considered legally binding until/unless it is overturned by Constitutional Court review. Kyiv was awash in rumors April 4 that Constitutional Court Chair Dombrovsky had resigned under political pressure (according to PM Yanukovych and Speaker Moroz) or hospitalized (various MPs and Transport Minister Rudkovsky), but Constitutional Court Judge Shyskin confirmed to us privately late April 4 that Dombrovsky had chaired the Court's morning and afternoon sessions and that there had been no talk about resignation. The ruling majority continues to keep its options open as of April 4, condemning the decree, appealing it, denying funding for elections, pressuring the CEC, and calling on Yushchenko to negotiate, but also sending signals of confidence that it would prevail in new elections if it came to a vote. Demonstrators for both sides have remained peaceful throughout this crisis. However, the continued efforts by the Coalition to reinstall the thoroughly discredited Kivalov are troubling. We will continue to encourage both sides reach a peaceful and workable solution within the framework of Ukrainian law. End Summary and Comment.

Yushchenko: Prepare for elections May 27

13. (SBU) President Yushchenko announced on national television late on April 2 the dissolution of the Rada and holding of pre-term elections on May 27; the official decree was promulgated in the Presidential Bulletin April 3, making it legal until/unless the Constitutional Court were to overturn it. Yushchenko's announcement came after several days of tense negotiations and peaceful demonstrations involving tens of thousands of protesters supporting both the ruling government coalition (Party of Regions, Socialists, and Communists) and the opposition (Our Ukraine, Yulia Tymoshenko Bloc, Yuri Lutsenko's People's Self Defense Civic movement) barely 200 meters from each other in downtown Kyiv. Yushchenko told the nation that he was dissolving the Rada because its majority had been formed against the will of the people expressed in the March 2006 elections, the Cabinet Ministers was working against the constitution, and that the National Unity Coalition was actually acting against the interest of national unity.

14. (SBU) On April 3, Yushchenko met with the head of the Central Election Commission (CEC), Yaroslav Davydovych, to discuss implementation of the elections. Davydovych stated that the elections could be conducted by the May 27 date set by the president. Davydovych announced later that the head of the National Defense and Security Council, Vitaliy Haiduk, would be in charge of financing the election and estimated it would cost 340 million hryvnia (\$68 million) to finance the elections. Yushchenko told reporters that he was taking steps to ensure that the elections will be conducted in a democratic and legal manner without disruption to the country.

Coalition Fights Back - Rada and Cabinet Reaction

15. (SBU) The Rada convened an extraordinary session of the Rada majority plus the entire cabinet and PM Yanukovych on April 2, less than an hour before Yushchenko addressed the nation, subsequently adopted a series of resolutions challenging Yushchenko's decision. Rada Speaker Moroz opened the session by relaying what Yushchenko had explained in consultations earlier in the day as his rationale (reftel) but stating there was no legal basis. The Rada adopted resolutions calling the president's decree unconstitutional and a destabilizing and dangerous precedent. The Rada also issued a decree prohibiting the Cabinet of Ministers from allocating state funds for the pre-term elections. On April 3, the Rada majority submitted a petition to the Constitutional Court asking it to declare the President's decree unconstitutional and issued a decree prohibiting the National Bank from funding activities related to the President's decree until the Constitutional Court determines the decree's constitutionality. The Cabinet, meeting on April 3, confirmed the Rada resolution, passing its own

resolution forbidding funding of new elections. (Note: President Yushchenko has appealed the Cabinet's resolution to the Constitutional Court).

Which Central Election Committee?

¶16. (SBU) The Rada also passed resolutions seeking to overturn two resolutions from December 8, 2004 relating to the composition Central Election Commission, essentially aiming to reseat the CEC chaired by Serhiy Kivalov which in November 2004 declared Yanukovych the winner of the falsified second round presidential election. Kivalov initially told the press that he could conduct the first CEC meeting under his leadership immediately, but later said he had 20 days to decide whether to remain an MP.

¶17. (C) Initial response from legal experts and opposition politicians rejected the legality of the Rada's move. Ex-CEC member and Our Ukraine MP Ruslan Knyazevych told reporters that the April 2 Rada resolution was unconstitutional because the Rada could only appoint and dismiss CEC members at the president's request; there had been none. He added that the current CEC was legitimate, that it has 156 million hryvnia (\$31.2 million) available, and could take funds from local budgets to meet the 340 million hryvnia budget estimate. Yushchenko told G-7 ambassadors April 3 that the attempt to reinstall Kivalov demonstrated compromise with the Rada was impossible and justified his dismissal decree (reftel).

¶18. (SBU) On April 3, the CEC press service stated that the Pechersk District Court threw out the April 2 Rada resolutions based on the appeal of three CEC members who contended that the resolutions violated the Law on the Central Election Committee. Kivalov, who claimed to reporters that he had been illegally dismissed as the CEC head in 2004, said that, as a member of the Higher Council of Justice (a governmental body for judicial oversight; Kivalov sits on it as Head of the Rada's Judicial Committee), he intended to demand the dismissal of the Pechersk court judges for their decision.

¶19. (C) During an April 4 meeting with the dip corps, PM Yanukovych complained that the CEC contained no Regions' representatives, and that the CEC needed balancing. (Note: we will check on whether any CEC members/nominees are party-based; many, such as current Chair Davydovych, are non-partisan, long-time civil servants.)

An MP Courtesy Call on the CEC?

¶10. (SBU) The CEC press service reported mid-day that 20 Coalition MPs had entered CEC Chair Davydovych's office and shut the door (note: MPs have the right of access to all government facilities. End note). CEC staffers told us that the coalition MPs were agitating for Kivalov's reinstatement and Davydovych's dismissal. Socialist MP Yevhen Filindash told reporters prior to arrival that they intended to remain at the CEC until May 27 with the goal of preventing the commission from "destabilizing" the situation in the country by implementing the "unconstitutional" decree. Regions MP Kalentik, speaking at the Rada's 1700 session, said he had been one of the 20 visitors and claimed that CEC security guards arrived ten minutes after the meeting with Davydovych started and had tried to lock them in the office. As of 1900, our contacts reported that some coalition MPs, less than the original 20, remained in the CEC building.

¶11. (U) Visit Embassy Kyiv's classified website:
www.state.gov/p/eur/kiev.
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